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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/500,944

07/07/2004

Andre Lechot

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51184 7590 05/07/2007
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EXAMINER

SHAFFER, RICHARD R

ART UNIT

PAPER NUMBER

3733

MAIL DATE

DELIVERY MODE

05/07/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/500,944

Applicant(s)

LECHOT, ANDRE

Examiner

Richard R. Shaffer

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3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Salyer (US Patent 6,001,105).

Salyer discloses an acetabular reamer (**Figures 1-7**) comprising: a hemispherical cutting shell (**14**); a series of cutting teeth (**26**) arranged uniformly and spaced apart in a spiral formation (**Figure 1; Column 4, Lines 64-68**); the cutting teeth (**26**) all having a matched cutting edge connected to the shell (**14**) by adjacent rise portions (the rise portions being the extensions down from the top cutting arc and into the shell); the teeth shaped according to form a hemispherical region for an implant; and circular holes (**28**) precede the cutting edges when the acetabular reamer is rotated (**Column 3, Line 35-36**). The device uses less teeth than other conceived of devices because the device has cuts without using the full surface area of the shell (which otherwise could include teeth). Further, the device removes more material than other possible cutting arcs due

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other devices possibly not extending as high from the shell surface or being narrow in width along the height such as a needle or spike structure.

Claims 1-12 are rejected under 35 U.S.C. 102(e) as being anticipated by Temeles (US Patent 6,283,971).

Temeles discloses an acetabular reamer (Figures 1-8) comprising: a hemispherical cutting shell (12); a series of cutting teeth (28) arranged uniformly and spaced apart in a spiral formation; the cutting teeth (28) all having a matched cutting edge connected to the shell (14) by adjacent rise portions (the rise portions being the extensions down from the top cutting arc and into the shell); the teeth shaped according to form a hemispherical region for an implant; and circular holes (20) precede the cutting edges when the acetabular reamer is rotated. The device uses less teeth than other conceived of devices because the device has cuts without using the full surface area of the shell (which otherwise could include teeth). Further, the device removes more material than other possible cutting arcs due other devices possibly not extending as high from the shell surface or being narrow in width along the height such as a needle or spike structure.

Response to Arguments

Applicant's arguments filed April 26th, 2007 have been fully considered but they are not persuasive. Applicant asserts that the examiner has admitted that Salyer and Temeles lack a "matched arc cutting edge" and "a cutting profile which substantially matches a profile of the overall shape to be cut." Such a statement has never been made, the only difference stated in the past dealt with the specific shape difference, not

vague functional language. The teeth of both Salyer and Temeles are uniform relative to the rest of the teeth found on the reamers; therefore each tooth has a "matched arc cutting edge" relative to the rest. Further, the limitation of "a cutting profile with substantially matches a profile of the overall shape to be cut" is inherent to any reamer, grater, drill, cutter, etc. How can something of one shape cut out shape other than it's edge from a single pass? A rectangle will cut a rectangular, a square will cut a square, a hemisphere will cut a half circle, etc. Applicant's functional limitation reads upon all devices that cut and thus clearly are anticipated by devices of the same art (acetabular reamers).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard R. Shaffer whose telephone number is 571-272-8683. The examiner can normally be reached on Monday-Friday (7am-5pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Richard Shaffer
May 2nd, 2007



EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER